

Basic Ordering Agreement



Department of Executive Services
Finance and Business Operations Division
Procurement and Contract Services Section
206-684-1681 TTY Relay: 711

ADVERTISED DATE: AUGUST 24, 2006

Basic Ordering Agreement Title: Miscellaneous Bus Parts

Reference Number 06-104 MM

Date Due Open Till Filled

Buyer Michael McKinley, michael.mckinley@metrokc.gov,
206-684-2047

Basic Ordering Agreement Number: _____

Furnish Miscellaneous Bus Parts as ordered by King County Metro Transit personnel in accordance with the attached instructions and requirements.

King County Procurement Services Section
Exchange Building, 8th Floor
821 Second Avenue
Seattle, WA 98104-1598
Office Hours: 8:00 a.m. – 5:00 p.m.
Monday - Friday

BIDDERS SHALL COMPLETE AND SIGN THE FORM BELOW.

This Basic Ordering Agreement is signed by an authorized representative of the supplier accepting all terms and conditions contained in the Basic Ordering Agreement. We acknowledge that attaching our terms and conditions or modifying the Basic Ordering Agreement terms and conditions may result in our Basic Ordering Agreement being rejected.

Company Name

Address

City/State /Postal Code

Signature

Print name and title

Email

Phone

Fax

The original copy of this Basic Ordering Agreement document shall be completed signed, and submitted with any required forms, catalogs and price lists.

SECTION 1 Instruction To Supplier

1.1 Introduction

King County Metro Transit requires sources for miscellaneous bus parts. This will include the purchase of small quantity and small dollar parts that do not have an annual usage large enough to require a formal bid.

1.2 Basic Ordering Agreement

The Basic Ordering Agreement is a method of identifying suppliers that are able to meet King County Metro Transit's requirements. The process is described below.

1.3 Submission

The supplier shall submit the signed cover page, the forms listed in Section 1-10, and any catalogs and price lists for parts the supplier is able provide. The supplier will be notified in writing if King County accepts their Basic Ordering Agreement. To access the Vendor Registration Form, choose "Suppliers; then choose "Registration", then choose "Registration Form."

Note: This Basic Ordering Agreement is available on the Web at www.metrokc.gov/procurement, choosing "RFPs, RFQ, ITBs" menu tab, then choose the "New" menu tab, then choose "Goods and Services", scroll down to 06-104 MM. Persons who download this document the internet shall complete the "Vendor Registration Form"

1.4 General

This is a Basic Ordering Agreement between King County and the supplier for miscellaneous bus parts. This BOA is the understanding negotiated between King County and the supplier that contains the terms and conditions applying to future contracts. At this time, the specific items or services, quantities, delivery requirements, and prices for future orders are unknown. This Basic Ordering Agreement is not a contract. A purchase order incorporating the terms and conditions of this Basic Ordering Agreement by reference and specifying an item, quantity, delivery and price will be the Contract Document for each separate purchase from the Supplier.

1.5 Limitations

- A. The establishment of this Basic Ordering Agreement does not imply or guarantee any future orders.
- B. Orders placed under this Basic Ordering Agreement shall be limited to \$25,000 including tax and shipping, the current King County threshold for formal bidding.
- C. The use of this Basic Ordering Agreement will not authorize purchases that are not in compliance with DBE requirements, King County Ordinances, Revised Code of Washington, or Federal Transit Administration requirements.

1.6 Basic Ordering Agreement Supplier Requirements

- A. Provide current pricing of available parts and service to King County Metro Transit Materials Management and King County Procurement and Contract Services Section.
- B. Only accept purchase orders under this Basic Ordering Agreement from the designated King County Metro Transit Materials Management Buyers.
- C. Coordinate with the King County Metro Transit Materials Management Buyers as needed. This may include determining availability of goods and services, delivery requirements, pricing, quality and other factors deemed necessary.

- D. Advise the appropriate King County Metro Transit Materials Management Buyer if delivery of goods or services cannot be completed in accordance with the terms and conditions of the order.

1.7 King County Requirement

- A. Ensure all required elements of an order are coordinated with the supplier prior to order placement. King County may rely on current price lists and other information provided by the Vendor.
- B. In the event the supplier cannot meet the established delivery date, King County may establish a new delivery date, allow the supplier to create a back order and fill it as soon as the item is available, or cancel the order and place the order with another supplier.

1.8 Applicable Goods and Services

This Basic Ordering Agreement was awarded to the supplier after King County determined that there is likely a continuing requirement for the goods and services covered herein. King County will obtain the goods and services from the low cost supplier meeting the requirements of King County.

1.9 Signature

The Basic Ordering Agreement shall be signed by the supplier's authorized representative.

1.10 Forms Required to Be Submitted with the Basic Ordering Agreement

The Bidder shall submit, with the Basic Ordering Agreement the applicable documents, and other requirements prior to award. Failure by the Supplier to submit required documents may result in rejection of the Basic Ordering Agreement. The forms listed below are available on the King County Procurement and Contract Services Section Website, www.metrokc.gov/procurement/forms. Then select goods and services/technical services.

- [Equal Benefit Worksheet and Declaration Form:](#)
- [Personnel Inventory Report](#)*:
- [Affidavit and Certificate of Compliance Regarding Equal Employment Opportunity](#)*:
- [Statement of Compliance – Union or Employee Referral Agency Statement](#)*:
- [Internal Revenue Service Form W-9](#) *

*If not on file with the County

SECTION 2 Standard Contractual Terms and Conditions

2.1 Administration

This Basic Ordering Agreement is between the County and the Supplier who shall be responsible for providing the goods described herein. The County is not party to defining the division of work between the Supplier and its Subcontractors. The Supplier represents that it has or shall obtain all duly licensed or qualified personnel, materials and equipment required to perform work hereunder.

The Supplier's performance under this Basic Ordering Agreement may be monitored and reviewed by Procurement. Reports and data required to be provided by the Supplier shall be delivered to Procurement. Questions by the Supplier regarding interpretation of the terms, provisions and requirements of this Contract shall be addressed to the Buyer or Project Manager for response.

2.2 Basic Ordering Agreement Amendments

No oral order or conduct by the County shall constitute a Basic Ordering Agreement Amendment. Basic Ordering Agreement Amendments shall only be effective upon written notification by the County.

2.3 Invoices and Payment

The Supplier shall submit properly certified invoices to King County. The invoice(s) shall contain the following information: The purchase order/contract number, item numbers, description of supplies or services, quantities, unit prices, extended totals, and discounts, if applicable. For services, identify specific deliverables, and/or hourly rates, hours worked, total hours or related fees.

The Supplier shall bill to the address on the purchase order. The County will take advantage of any prompt payment discount terms bid. Discount periods shall be extended if the invoice is returned for credit or correction.

When a purchase order is issued that has the potential for multiple or partial deliveries, a separate invoice shall be generated for each completed delivery accepted by the County.

Failure to comply with these requirements or to provide an invoice in conformance with the contract may delay payment.

Upon acceptance of payment, the Supplier waives any claims for the goods or services covered by the Invoice. No advance payment shall be made for the goods or services furnished by Supplier pursuant to this Basic Ordering Agreement.

King County will not be bound by prices contained in an invoice that are higher than those in the currently approved price list. If a price increase has not been accepted in writing by King County, the invoice may be rejected and returned to the Supplier for a correction.

2.4 Rejection of Goods Or Services

After award, the Buyer or authorized County representative shall have the option of rejecting or refusing delivery of any and all goods or services which are not in strict conformity with the requirements of the Purchase Order. All rejected goods or services shall be promptly replaced or re-performed and be subject to approval by the County. All replacement goods and services shall be provided at the Supplier's own expense.

2.5 Termination For Convenience/Default/Non-appropriation

A. Termination for Convenience

The County for its convenience may terminate this Basic Ordering Agreement, in whole or in part, at any time by written notice sent certified mail, return receipt requested, to the Supplier. After receipt of a Notice of Termination ("Notice"), and except as directed by the County, the Supplier shall immediately stop work as directed in the Notice, and comply with all other requirements in the Notice. The Supplier will be paid its costs, including necessary and reasonable Basic Ordering Agreement close-out costs and profit on that portion of the work satisfactorily performed up to the date of termination as specified in the notice. The Supplier shall promptly submit its request for the termination payment, together with detailed supporting documentation. If the Supplier has any property in its possession belonging to the County, the Supplier shall account for the same and dispose of it in the manner the County directs. All termination payment requests may be subject to Cost or Price Analysis to determine reasonableness and compliance with the Basic Ordering Agreement and applicable laws and regulations.

B. Termination for Default

If the Supplier does not deliver work in accordance with the Basic Ordering Agreement, or the Supplier fails to perform in the manner called for in the Basic Ordering Agreement, or the Supplier fails to comply with any material provisions of the Basic Ordering Agreement, the County may terminate this Basic Ordering Agreement, in whole or in part, for default as follows:

A Notice to Cure will be served on the Supplier by certified mail (return receipt requested) or a delivery service capable of providing a receipt. The Supplier shall have ten (10) Days from the date the Notice to Cure was served to cure the default or provide the County with a detailed written plan, which indicates the time and methods needed to bring the work into compliance and cure the default.

If the Supplier has not cured the default or the plan to cure the default is not acceptable to the County, the County may terminate the Contract. Termination shall occur by serving a Notice of Termination by certified mail (return receipt requested) or delivery service capable of providing a receipt on the Supplier setting forth the manner in which the Supplier is in default and the effective date of termination.

The Supplier will only be paid for work delivered and Accepted, or work performed in accordance with the manner of performance set forth in the Basic Ordering Agreement less any damages to the County caused by or arising from such default. All termination payment requests are subject to Cost or Price Analysis to verify compliance with the Basic Ordering Agreement and applicable laws and regulations.

The termination of this Basic Ordering Agreement shall in no way relieve the Supplier from any of its obligations under this Contract nor limit the rights and remedies of the County hereunder in any manner.

C. Termination for Non-Appropriation

If expected or actual funding is withdrawn, reduced, or limited in any way prior to the termination date set forth in this Basic Ordering Agreement or in any amendment hereto, the County may, upon written notice to the Supplier, terminate this Contract in whole or in part.

In accordance with King County Code 4.04.040B.6, payment shall not exceed the appropriation for the year in which termination is effected. If this Basic Ordering Agreement is terminated for non-appropriation, the County shall be liable only for payment in accordance with the terms of this Basic Ordering Agreement for performance rendered prior to the effective date of termination; and, the Supplier shall be released from any obligation under this Basic Ordering Agreement or a related Purchase Order to provide further work pursuant to the Basic Ordering Agreement as are affected by the termination.

Funding under this Basic Ordering Agreement beyond the current appropriation year is conditional upon the appropriation by the County Council of sufficient funds to support the activities described in this Basic Ordering Agreement. Should such an appropriation not be approved, the Basic Ordering Agreement shall terminate at the close of the current appropriation year. The appropriation year ends on December 31 of each year.

2.6 Force Majeure

The term force majeure shall include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, fire, accidents shutdowns for purpose of emergency repairs, industrial, civil or public disturbances, causing the inability to perform the requirements of this Basic Ordering Agreement. If any party is rendered unable, wholly or in part, by a force majeure event or any event cause not within such party's control, to perform or comply with any obligation or condition of this Contract, upon giving notice and reasonably full particulars to the other party, such obligation or condition shall be suspended only for the time and to the extent commercially practicable to restore normal operations. In the event the Supplier ceases to be excused pursuant to this provision, then the County shall be entitled to exercise any remedies otherwise provided for in this Basic Ordering Agreement, including Termination for Default.

Whenever a force majeure event causes the Supplier to allocate limited resources between or among the Supplier's customers, the County shall receive no less priority in respect to such allocation than any of the Supplier's other customers.

2.7 Taxes, Licenses, and Certificate Requirements

This Basic Ordering Agreement and any of the work provided hereunder is contingent and expressly conditioned upon the ability of the Supplier to provide the specified goods or services consistent with applicable federal, state or local laws and regulations. If, for any reason, the Supplier's required compliances are terminated, suspended, revoked or in any manner modified from their status at the time this Contract becomes effective, the Supplier shall notify the County immediately of such condition in writing.

The Supplier and subcontractor(s) shall maintain and be liable for all taxes (except sales/use taxes), fees, licenses, permits and costs as may be required by applicable federal, state or local laws and regulations as applicable to the work under this Contract.

2.8 Assignment

Neither party shall assign any interest, obligation or benefit under or in this Basic Ordering Agreement or transfer any interest in the same, whether by assignment or novation, without prior written consent of the other party. If assignment is approved, this Basic Ordering Agreement shall be binding upon and inure to the benefit of the successors of the assigning party. This provision shall not prevent the Supplier from pledging any proceeds from this Basic Ordering Agreement as security to a lender so long as King County Policy Fin10-1 (AP), paragraph 6.1.3 is followed. If assignment is approved, it shall be accepted by either party upon the posting of all required bonds, securities and the like by the

assignee, and the written agreement by assignee to assume and be responsible for the obligations and liabilities of the Contract, known and unknown, and applicable law.

2.9 Indemnification and Hold Harmless

- A. In providing services under this Basic Ordering Agreement, the Supplier is an independent Supplier, and neither the Supplier nor its officers, agents or employees are employees of the County for any purpose. The Supplier shall be responsible for all federal and/or state tax, industrial insurance and Social Security liability that may result from the performance of and compensation for these services and shall make no claim of career service or civil service rights which may accrue to a County employee under state or local law.

The County assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by or on behalf of the Supplier, its employees and/or others by reason of this Contract. The Supplier shall protect, indemnify, defend and save harmless the County and its officers, agents and employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from (1) the Supplier's failure to pay any such compensation, wages, benefits or taxes; and/or (2) the supplying to the Supplier work, services, materials, and/or supplies by Supplier employees or other suppliers in connection with or in support of the performance of this Contract.

- B. The Supplier further agrees that it is responsible for and shall repay the County all indicated amounts following an audit exception which occurs due to the negligence, intentional act and/or failure for any reason to comply with the terms of this Basic Ordering Agreement by the Supplier, its officers, employees, agents, and/or representatives. This duty to repay shall not be diminished or extinguished by the prior termination of the Contract pursuant to the Duration of Contract, or the Termination section.

- C. The Supplier shall protect, defend, indemnify, and save harmless the County, [and the State of Washington or US Government (when any funds for this Contract are provided by them)], their officers, employees, and agents from any and all costs, fees (including attorney fees), claims, actions, lawsuits, judgments, awards of damages or liability of any kind, arising out of or in any way resulting from the negligent acts or omissions of the Supplier, its officers, employees, subcontractors or any tier and/or agents. The Supplier agrees that its obligations under this paragraph extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees, subcontractors of any tier or agents.

In addition to injuries to persons and damage to property, the term "claims," for purposes of this paragraph C, shall include, but not be limited to, assertions that the use or transfer of any software, book, document, report, film, tape, or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, and/or otherwise results in unfair trade practice.

- D. For purposes of paragraphs A and C above, the Supplier, by mutual negotiation, hereby waives, as respects the County only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.
- E. In the event the County incurs attorney fees and/or costs in the defense of claims within the scope of paragraphs A and C above, such attorney fees and costs shall be recoverable from the Supplier. In addition King County shall be entitled to recover from the Supplier its attorney fees, and costs incurred to enforce the provisions of this section.
- F. The indemnification, protection, defense and save harmless obligations contained herein shall survive the expiration, abandonment or termination of this Basic Ordering Agreement.
- G. Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Basic Ordering Agreement.

2.10 Applicable Law and Forum

Except as hereinafter specifically provided, this Basic Ordering Agreement shall be governed by and construed according to the laws of the State of Washington, including, but not limited to, the Uniform Commercial Code, Title 62A RCW. Any claim or suit concerning this Basic Ordering Agreement shall only be filed in either the King County Superior Court or U.S. District for the Western District of Washington, in Seattle.

2.11 Conflicts of Interest and Non-Competitive Practices

By entering into this Basic Ordering Agreement to perform work, the Supplier represents that it has no direct or indirect pecuniary or proprietary interest, and that it shall not require any interest that conflicts in any manner or degree with the work required to be performed under this Basic Ordering Agreement. The Supplier shall not employ any Person or agent having any conflict of interest. In the event that the Supplier or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such conflict to the County. The County shall require that the Supplier take immediate action to eliminate the conflict up to and including termination for default.

By entering into this Basic Ordering Agreement to perform work, the Supplier represents that no Persons except as designated by Supplier shall be employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid; and no gratuities, in the form of entertainment, gifts or otherwise, were bided or given by the Supplier or any of its agents; employees or representatives, to any official, member or employee of the County or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Basic Ordering Agreement.

2.12 Disputes, Claims and Appeals

The Supplier shall address questions or claims regarding the Basic Ordering Agreement in writing to the Buyer and Project Manager, within ten (10) Days of the date on which the Supplier knows or should know of the question or claim. No claim by the Supplier shall be allowed if asserted after final payment under this Contract. No claim shall be allowed for any costs incurred more than ten (10) Days before the Supplier gives written notice, as required in this section. The Buyer and Project Manager shall ordinarily respond to the Supplier in writing with a decision, but absent such written response, the question or claim shall be deemed denied upon the tenth (10th) Day following receipt by the Buyer and Project Manager.

In the event the Supplier disagrees with the determination of the Buyer and Project Manager, the Supplier shall within five (5) Days of the date of such determination, appeal the determination in writing to the Procurement and Contract Services Section Manager. Such written notice of appeal shall include all information necessary to substantiate the appeal. The Procurement and Contract Services Section Manager shall review the appeal and make a determination in writing, which shall be final. Appeal to the Procurement and Contract Services Section Manager shall be a condition precedent to alternative dispute resolution or litigation.

Pending final decision of a dispute hereunder, the Supplier shall proceed diligently with the performance of the Basic Ordering Agreement and in accordance with the direction of the Buyer or Project Manager. Failure to comply precisely with the time deadlines under this subsection as to any claim shall operate as a waiver and release of that claim and an acknowledgement of prejudice to the County.

2.13 Maintenance of Records/Audits

The Supplier shall maintain, and shall require any subcontractor to maintain, accounts and records, including personnel, property, financial and programmatic records and other such records as may be deemed necessary by the County to ensure proper accounting for all project funds and compliance with this Contract. All such records shall sufficiently and properly reflect all direct and indirect costs of any nature expended and services provided in the performance of this Basic Ordering Agreement. The Supplier shall make such documents available to the County for inspection, copying, and auditing upon request.

All records referenced in the paragraph above, shall be maintained for a period of six (6) years after completion of work or termination hereof unless permission to destroy them is granted by the Office of the Archivist in accordance with RCW Chapter 40.14, or unless a longer retention period is required by law.

The Supplier shall provide access to its facilities, including those of any subcontractor, to the County, the state and/or federal agencies or officials at all reasonable times in order to monitor and evaluate the services provided under this Basic Ordering Agreement. The County will give advance notice to the Supplier in the case of fiscal audits to be conducted by the County.

The Supplier agrees to cooperate with the County or its designee in the evaluation of services provided under this Contract and to make available all information reasonably required by any such evaluation process. The results and records of said evaluation shall be maintained and disclosed in accordance with RCW Chapter 42.17.

2.14 Environmental Purchasing Policy

Offerors able to supply products containing recycled and environmentally preferable materials that meet performance requirements are encouraged to offer them in bids and proposals.

The Offeror and Supplier shall use recycled paper for all printed and photocopied documents related to the submission of this solicitation and fulfillment of the contract and shall, whenever practicable, use both sides of the paper. (Reference: KCC 10.16 & King County Executive Policy CON 7-1-2).

2.15 Industrial and Hazardous Waste

The Supplier shall comply with all applicable local ordinances, state and federal statutes, and supporting rules and regulations governing the discharge of industrial waste to public sewer, private sewer, or side sewer tributary to the metropolitan sewer system.

Supplier shall handle and dispose of all hazardous wastes in compliance with all applicable local, state and federal laws and regulations, including the Resource Conservation and Recovery Act, the Washington Hazardous Waste Management Act, and applicable rules and regulations of the Environmental Protection Agency and the Department of Ecology governing the generation, storage, treatment, transportation or disposal of hazardous wastes.

2.16 Patents and Royalties

The Supplier is responsible for paying all license fees, royalties or the costs of defending claims for the infringement of any intellectual property that may be used in performing this Basic Ordering Agreement.

2.17 Supported Employment Program

The County encourages the creation of supported employment programs for developmentally and/or severely disabled individuals. The County itself has such a program and is actively seeking to do

business with those Suppliers and Consultants that share this employment approach. If your firm has such a program, or intends to develop such a program during the life of this Contract, please submit Documentation supporting this claim with your bid. If you have questions, or need additional information, please contact the Community and Human Services Division, Developmental Disabilities Division, 206-296-5268.

2.18 Nondiscrimination and Equal Employment Program

During the performance of this Basic Ordering Agreement, neither the Supplier nor any party subcontracting under the authority of this Contract shall discriminate nor tolerate harassment on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age, or the presence of any sensory, mental, or physical disability in the employment or application for employment or in the administration or delivery of services or any other benefits under this Basic Ordering Agreement. King County Code, and all applicable state and federal anti-discrimination laws, rules, regulations and requirements are incorporated herein by reference, and such requirements shall apply to this contract. Ref: KCC 12.16, 12.17, and 12.18

2.19 Equal Benefits To Employees With Domestic Partners

King County's Equal Benefits (EB) Ordinance 14823 states that to be eligible for award of contracts at a cost of \$25,000.00 or more, firms must not discriminate in the provisions of employee benefits between employees with spouses, and employees with domestic partners. The successful Supplier, bidder or proposer shall be required to complete a Worksheet and Declaration form. Compliance with Ordinance 14823 is a mandatory condition for execution of a contract. The EB Compliance forms, and Ordinance 14823 are available online at: <http://www.metrokc.gov/procurement/forms/gs.aspx>.

2.20 Non-Waiver of Breach

No action or failure to act by the County shall constitute a waiver of any right or duty afforded to the County under the Basic Ordering Agreement; nor shall any such action or failure to act by the County constitute an approval of, or acquiescence in, any breach hereunder, except as may be specifically stated by the County in writing.

2.21 Severability

Whenever possible, each provision of this Basic Ordering Agreement shall be interpreted to be effective and valid under applicable law. If any provision is found to be invalid, illegal, or unenforceable, then such provision or portion thereof shall be modified to the extent necessary to render it legal, valid, and enforceable and have the intent and economic effect as close as possible to the invalid, illegal, and unenforceable provision.

SECTION 3 Specific Contractual Terms & Conditions

3.1 Execution of the Basic Ordering Agreement

The documents constituting the Basic Ordering Agreement between the County and the Supplier are intended to be complementary so that what is required by any one of them shall be as binding as if called for by all of them. In the event of any conflicting provisions or requirements within the several parts of the Basic Ordering Agreement documents, they shall take precedence as listed. No other act of the County shall constitute Basic Ordering Agreement award. After the Basic Ordering Agreement award, the County shall issue Purchase Orders detailing the work to be performed.

3.2 Basic Ordering Agreement Term

The initial term of this Basic Ordering Agreement will be one year and may be extended for four (4) additional one-year periods at the option of the County, subject to the termination clauses contained herein. King County reserves the right to extend the term if determined to be in the best interest of the County.

Contracts or purchase orders will be issued by the County. Contract amendments or change orders issued by the County may reflect modification(s) of Basic Ordering Agreement terms, funding or other matters.

3.3 Authorized Users

The Supplier shall only accept orders under this Basic Ordering Agreement from King County Metro Transit Materials Management Buyers. The current Buyers are listed below.

Address:

King County Metro Transit Materials Management
12200 East Marginal Way South
Seattle, WA 98168

Buyers:

Bill Cleveland
Phone: (206) 684-2208
FAX: (206) 684-2831

Martin Koe
Phone: (206) 684-2207
FAX: (206) 384-2831

Tom Mulvihill
Phone: (206) 684-2203
FAX: (206) 684-2207

Dan Nelson
Phone: (206) 684-2205
FAX: (206) 684-2831

Lead Buyer

Rick Stiles

Phone: (206) 684-2206

FAX: (206) 684-2831

Chief

Bill Midgett

Phone: (206) 684-2271

FAX: (206) 684-2831

3.4 Shipping Charges

All prices shall include freight FOB to the designated delivery point. The County will reject requests for additional compensation for freight charges.

3.5 Packing Slips

Each delivery to the County shall have a packing slip enclosed that identifies the requester, purchase order number, part number, unit price and quantity of each part shipped. If the delivery is a partial shipment, indicate on the packing slip that it is not a complete shipment of that requisition and identify the items not shipped and provide a projected completion date of the order.

If the delivery combines items from more than one purchase order, separate packing slips shall be included in the shipment for each.

3.6 Use Report

The Supplier shall, if requested, submit to the Buyer a report of sales made to King County under this Basic Ordering Agreement. The report, in a format acceptable to King County, shall identify the detail required by the Buyer, which may include but is not limited to, delivery location, the item description, whether it's a Contract or non-Contract item, quantity, price and discount.

3.7 Warranty

The Supplier warrants that the work performed under this Basic Ordering Agreement shall be free from defects in material and workmanship, and shall conform to all requirements of this Contract, for a period of at least six (6) months from date of acceptance of such work by the County. Any work corrected shall be subject to this subsection to the same extent as the work initially provided.

The bidder shall provide, upon request by the County, their standard warranty. The warranty shall be specified for all components of the equipment regardless of whether these components were built by the original equipment manufacturer or outside suppliers. King County may avail itself of the bidder's standard warranty if more beneficial to the County.

Conducting of tests or inspections, acceptance, or the processing of payment(s) by the County shall not constitute a waiver of any rights under this Basic Ordering Agreement or in law. The termination of this Contract shall in no way relieve the Supplier from its warranty responsibility.

The Supplier shall ensure that the warranty requirements of this Basic Ordering Agreement are enforceable through and against the Supplier's suppliers, vendors, distributors and Subcontractors. The Supplier shall cooperate with the County in facilitating warranty related work by such suppliers, vendors, distributors and Subcontractors.

Supplier warrants that the Services shall in all material respects conform to the requirements of this Basic Ordering Agreement. Supplier warrants that qualified professional personnel with in-depth knowledge shall perform the Services in a timely and professional manner; and that the Services shall conform to the standards generally observed in the industry for similar Services. Supplier warrants that the Services shall be in compliance with all applicable laws, rules and regulations.

3.8 Warranty Remedies

Whenever possible, the Supplier shall provide “on the spot” settlement of warranty claims or disputes, and authorize local representatives to act on the equipment manufacturer’s behalf.

If at any time during the six (6) Month period immediately following acceptance of any work covered by this Basic Ordering Agreement, Supplier or the County discovers one or more material defects or errors in the work or any other aspect in which the work materially fails to meet the provisions of the warranty requirements herein Supplier shall, at its own expense and within thirty (30) Days of notification of the defect by the County, correct the defect, error or nonconformity.

The County shall give written notice of any defect to the Supplier. If the Supplier has not corrected defect within thirty (30) Days after receiving the written notice, the County, in its sole discretion, may correct the defect itself. In the case of an emergency where the County believes delay could cause serious injury, loss or damage, the County may waive the written notice and correct the defect. In either case the County shall charge-back the cost for such warranty repair to the Supplier.

The Supplier is responsible for all costs of repair or replacement in order to restore the work to the applicable Contract requirements, including shipping charges, for work found defective within the warranty period, regardless of who actually corrects the defect.

3.9 Product Return

The County reserves the right to return standard products to the Supplier for full refund or credit when the Supplier is notified of the return within 30 days of the County’s receipt of products.

The County further reserves the right to return products, parts and supplies determined to be surplus and no longer required by the County. Parts and supplies eligible for return to the Supplier shall have been purchased for inventory or as spared, be unused, and in the same general condition as when received. The County will advise the Supplier of its intention to return any parts and supplies. The Supplier has no obligation to accept such goods more than 2 years after the County’s receipt of said goods. The Supplier is allowed a restocking fee of not more than 15% (fifteen percent) of the current price for the return of surplus products, parts and supplies.

The Supplier shall, at the County’s option, issue a credit for the dollar value of the merchandise returned or refund that dollar amount (less any applicable restocking fee) to King County.

This subsection does not apply to any merchandise made to order for the County.

3.10 Hazardous Chemical Communication

In order to comply with WAC 296-62-054, Hazard Communication, the Supplier shall prepare, a Material Safety Data Sheet (MSDS) for all products containing any toxic products that may be harmful to the end user. The MSDS Sheet is to accompany the toxic product(s) to the specified delivery sites and include the Chemical Abstract Service (CAS) numbers for every chemical that is listed in the MSDS. If the product is actually used diluted, the rate shall be so stated in the MSDS and the hazards and corresponding Personal protection, etc. also be listed. SARA Title 3 chemicals shall be listed with

the percentage by weight of the total product. The MSDS shall include a statement as to the intended use of the product.

3.11 Prohibition on Asbestos-Containing Products

Asbestos-containing products shall not be provided to the County under this Basic Ordering Agreement, unless no practicable alternative for the asbestos-containing product exists and the Supplier obtains the written consent of the County. The Supplier shall notify the County in writing at least sixty (60) Days before it plans to supply the County with an asbestos-containing product. The County will respond to such notification within thirty (30) Days of receipt. The Supplier shall comply with applicable state, federal and local labeling and other laws, regulations and ordinances pertaining to asbestos-containing products, including, but not limited to, the State of Washington Industrial Safety and Health Act and the federal Occupational Safety and Health Act.

SECTION 4 FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIREMENTS

This Basic Ordering Agreement shall be partially funded by the Federal Transit Administration (FTA). Neither the FTA nor the Federal Government shall be a party to any subagreement nor to any solicitations or request for proposals. This Basic Ordering Agreement shall be subject to regulations contained in 49 Code of Federal Regulations (CFR) Part 18 and the applicable grant agreement between the County and the FTA. The following provisions include, in part, certain standard terms and conditions required by the U.S. Department of Transportation, whether expressly set forth in the following Basic Ordering Agreement provisions. All Basic Ordering Agreement provisions required by the U.S. Department of Transportation, as set forth in FTA Circular 4220.1E, dated June 19, 2003, are hereby incorporated by reference as are the requirements of the Master Agreement between King County and the U.S. Department of Transportation, including all “flow down” provisions to third party Suppliers, Subcontractors and or suppliers. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Basic Ordering Agreement. The Supplier agrees not to perform any act, fail to perform any act, or refuse to comply with any County requests that would cause the County to be in violation of the FTA terms and conditions.

4.1 Changes in Federal laws, Regulations, Policies and Administrative Practices

New federal laws, regulations, policies and administrative practices may be established after the date this Basic Ordering Agreement is established and may apply to this Basic Ordering Agreement. To achieve compliance with changing federal requirements, the Supplier agrees to accept all changed requirements that apply to this Basic Ordering Agreement and require Subcontractors comply with revised requirements as well.

Ref: FTA Master Agreement MA (10), 10-1-2003, Section 2(c).

4.2 Federal Changes

The Supplier agrees to comply with all applicable FTA regulations, policies, procedures and directives, including without limitation, those listed directly or by reference in the Master Agreement between the County and FTA, as they may be amended or promulgated from time to time during the term of this Basic Ordering Agreement. Supplier's failure to comply shall constitute a material breach of this Basic Ordering Agreement.

Ref: 49 CFR Part 18 and FTA Master Agreement MA (10), 10-1-2003, Section 2(c).

4.3 No Federal Government Obligations to Third Parties

The Supplier agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Basic Ordering Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Basic Ordering Agreement and shall not be subject to any obligations or liabilities to the Supplier or any other party (whether or not a party to this Basic Ordering Agreement) pertaining to any matter resulting from this Basic Ordering Agreement.

The Supplier agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who shall be subject to its provisions.

Ref: FTA Master Agreement MA (10), 10-1-2003, Section 2(f).

4.4 Equal Employment Opportunity

In connection with the execution of this Basic Ordering Agreement, the Supplier shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Supplier shall take affirmative action to ensure that the hiring of applicants and treatment of employees during employment is conducted without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Supplier further agrees to insert a similar provision in all Subcontracts, except Subcontracts for standard commercial supplies or raw materials.

The Supplier agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.

Ref: Executive Order 11246, as amended by Executive Order 11375; Title VII of the Civil Rights Act, as amended, 42 USC § 2000e; Federal transit laws at 49 USC § 5332; section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC § 623; section 102 of the Americans with Disabilities Act, as amended, 42 USC §§ 12101 et seq.; 29 CFR Part 1630; 41 CFR § 60-1.4.

4.5 Title VI Compliance

The Supplier shall comply with and shall ensure the compliance by all Subcontractors under this Basic Ordering Agreement with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 USC 2000d) and the regulations of the federal Department of Transportation, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act," 49 CFR Part 21, (hereinafter "Regulations") as they may be amended from time to time. The Federal Government and or the County has a right to seek judicial enforcement with regard to any matter arising under Title IV of the Civil Rights Act and implementing regulations.

Ref: 49 CFR Part 21.19.

During the performance of this Basic Ordering Agreement, the Supplier, for itself, its assignees and successors-in-interest agrees as follows:

- A. Nondiscrimination—49 CFR Part 26. The Supplier or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Basic Ordering Agreement. The Supplier shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of United States Department of Transportation ("USDOT")— assisted Basic Ordering Agreements. Failure by the Supplier to carry out these requirements is a material breach of this Basic Ordering Agreement, which may result in the termination of this Basic Ordering Agreement or such other remedy, as the County deems appropriate.
- B. Prompt Payment. The Supplier agrees to pay each Subcontractor under this Basic Ordering Agreement for satisfactory performance of its Contract no later than thirty (30) Days from the receipt of each payment the Supplier receives from the County. The Supplier agrees further to return retainage payments to each Subcontractor within thirty (30) Days after the Subcontractor's Work is satisfactorily completed. Any delay or postponement of payment from the above referenced period may occur only for good cause following written approval of the County. This clause applies to both DBE and non-DBE Subcontractors.
- C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Supplier for Work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential Subcontractor or supplier shall be notified by the Supplier of the Supplier's obligations

under this Basic Ordering Agreement and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.

- D. Sanctions for Noncompliance. In the event of the Supplier's noncompliance with the nondiscrimination provisions of this Basic Ordering Agreement, King County shall impose such Basic Ordering Agreement sanctions as it or the FTA may determine to be appropriate, including, but not limited to:
- 1 Withholding of payments to the Supplier under the Basic Ordering Agreement until the Supplier complies, and/or
 - 2 Cancellation, termination, or suspension of the Basic Ordering Agreement, in whole or in part.
- E. Incorporation of Provisions. The Supplier shall include the provisions of paragraphs A through D in every Subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Supplier shall take such action with respect to any subcontract or procurement as the County or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a Supplier becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Supplier may request the County to enter into such litigation to protect the interests of the County and, in addition, the Supplier may request the United States to enter into such litigation to protect the interests of the United States.
- F. Supplier's List. Supplier is requested to submit the name, address, DBE/Non-DBE status, annual gross receipts, and age of all Subcontractors and suppliers bidding or quoting on DOT-assisted projects. **Compliance with the requirement to report the Supplier's List information is a matter of responsibility.** Supplier is requested to submit the Supplier's List prior to Contract Work.

4.6 Disadvantaged Business Enterprise Requirements

A. DBE Participation

The County has not established a DBE goal for this Contract. In accordance with this section, the County has an overall annual DBE goal of thirteen percent (13%) for FTA assisted projects. However, the County requires that the Supplier report any actual DBE participation on this Basic Ordering Agreement to enable the County to monitor accurately DBE program compliance.

B. Reporting Requirement

The USDOT requires that the Supplier report any actual DBE participation on this Basic Ordering Agreement to enable the County to monitor DBE participation accurately and for reporting purposes.

C. DBE Eligibility

A DBE means a business certified as a DBE by the Washington State Office of Minority and Women's Business Enterprise (OMWBE).

D. DBE Listing

A Directory of DBE firms certified by the Washington State Office of Minority and Women's Business Enterprises (OMWBE) is available online at the following website address: <http://www.omwbe.wa.gov/directory/directory.htm> Telephone the OMWBE at 360-753-9693. **All DBE firms must be certified by OMWBE.**

E. Counting DBE Participation

The County will count DBE participation toward its annual overall DBE goal as provided for in 49 CFR 26.55.

F. DBE Supplier

The County will only count the Work a DBE Supplier performs with its own forces as well as the Work performed by DBE Subcontractors with their own work forces.

G. Joint Venture

When a DBE performs as a participant in a joint venture, King County will only count that portion of the total dollar value of the Basic Ordering Agreement equal to the distinct, clearly defined portion of the Work that the DBE performs with its own forces.

H. Commercially Useful Function

The County will count expenditures to a DBE Supplier only for DBEs who perform a commercially useful function on that Basic Ordering Agreement.

- 1 DBE performs a commercially useful function when it is responsible for execution of the Work of the Basic Ordering Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the Work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the Basic Ordering Agreement, for negotiating price, determining quality and quantity, ordering the material, installing (if applicable) and paying for the material itself.
- 2 DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Basic Ordering Agreement or project through which funds is passed in order to obtain the appearance of DBE participation.
- 3 A DBE does not perform a commercially useful function if it fails to exercise responsibility with its own work force for at least 30 percent of the total cost of its Basic Ordering Agreement, or the DBE subcontracts a greater portion of the Work of a Basic Ordering Agreement than would be expected on the basis of normal industry practice for the type of Work involved.
- 4 Expenditures with DBEs. Expenditures with DBEs for materials or supplies shall be counted as provided in the following:
 - a. **Manufacturer.** If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies towards the DBE goal. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Basic Ordering Agreement and of the general character described by the specifications.
 - b. **Regular Dealer.** If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Basic Ordering Agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
 - c. To be a regular dealer a firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
 - d. A Person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business, as provided in this Section (4)(b), if the Person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or of the cost of the materials and supplies themselves shall be counted.

Basic Ordering Agreement-by-Basic Ordering Agreement basis.

Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers.

- 5 Purchases from a DBE. With respect to materials or supplies purchased from a DBE who is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are reasonable and typical for the services rendered. No part of the cost of the materials and supplies themselves shall be counted.

4.7 Disadvantaged Business Enterprise and Other Small Business Participation

The County encourages Suppliers to carry out the following steps to facilitate DBE and other small business participation, which may be either on a direct basis in response to this solicitation or as a Subcontractor to a bidder.

- A. Solicit through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or written notices) DBE and other small businesses that have the capability to perform the Work of the Basic Ordering Agreement.
- B. Select portions of the Work to be performed by Subcontractors to increase the likelihood that DBE and other small businesses' goals will be achieved
- C. Provide interested Subcontractors with adequate information about the plans, specifications, and requirements of the Basic Ordering Agreement in a timely manner to assist them in responding to a solicitation.
- D. Negotiate in good faith with interested DBEs and other small businesses.
- E. Avoid rejecting DBEs and other small businesses as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Supplier's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Supplier's efforts to obtain DBE and other small business participation.
- F. Make efforts to assist interested DBEs and other small businesses in obtaining bonding, lines of credit, or insurance as required by the recipient or Supplier.
- G. Make efforts to assist interested DBEs and other small businesses in obtaining necessary equipment, supplies, materials, or related assistance or services.
- H. Effectively use the services of available minority/women community organizations, Suppliers' groups, local, state, and Federal minority/women business assistance offices; Disadvantaged Business Enterprise and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs and other small businesses.

4.8 Cargo Preference - Use of U.S. Flag Vessels

In the event that ocean shipment or international air transportation is required for any equipment, material or commodities pursuant to this Basic Ordering Agreement, the Supplier shall:

- A. Utilize privately owned United States flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage involved, computed separately for dry bulk carriers, dry cargo liners and tankers, whenever shipping any equipment, materials or commodities pursuant to this Basic Ordering Agreement, to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels.

- B. Furnish within twenty (20) working days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph A of this section, to the County, through the prime Supplier in the case of Subcontractor bills-of-lading, and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590, marked with appropriate identification of the project.
- C. Insert the substance of the provisions of this section in all subcontracts issued pursuant to this Basic Ordering Agreement when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

Ref: 46 USC § 1241; 46 CFR Part 381.

4.9 Fly America

The Supplier agrees to utilize United States flag air carriers to the extent such carriers Provide the air transportation needed, or accomplish the Supplier's mission. The Supplier agrees to utilize United States flag air carriers even though comparable or a different kind of service can be provided at less cost by a foreign air carrier, a foreign air carrier can be paid for in excess foreign currency, unless Unites States flag air carriers decline to accept excess or near excess foreign currencies for transportation payable only out of those monies. The Supplier shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service with a U.S. flag air carrier was not available or why it was necessary to use a foreign carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Supplier agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

Ref: 49 USC § 40118; 41 CFR Part 301-310.

4.10 Audit and Inspection of Records

In the case of all negotiated Basic Ordering Agreements and Basic Ordering Agreements for construction, reconstruction or improvement of facilities and equipment, which were entered into under other than competitive proposal procedures, Supplier agrees that the County, the Comptroller General of the United States or any of their duly authorized representatives, shall, for the purpose of audit and examination be permitted to inspect all Work, materials, payrolls, and other data and records with regard to the project, and to audit the books, records and accounts with regard to the project. Further, Supplier agrees to maintain all required records for at least three (3) years after the County makes final payment and all other pending matters are closed.

Ref: 49 USC § 5324; 18 CFR Part 18.36 (i); 49 CFR Part 633.17; and FTA Master Agreement MA (10), 10-1-2003, Section 8 (c) and (d).

4.11 Access Requirements for Individuals with Disabilities

The County and the Supplier are required to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC §§ 12101, et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; and 49 USC § 5301(d), and the following regulations and any amendments thereto:

- U.S. Department of Transportation regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;
- U.S. Department of Transportation regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities receiving from Federal Financial Assistance," 49 CFR Part 27;

- U.S. Department of Transportation regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 CFR Part 38;
- U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 35;
- U.S. Department of Justice regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;
- U.S. General Services Administration regulations, "Construction and Alteration of Public Buildings," 41 CFR Subpart 101-19;
- U.S. Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;
- U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F; and
- FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609.

4.12 Interest of Members of or Delegates of Congress

Pursuant to 41 USC § 22, no member of or delegate to the Congress of the United States shall be admitted to any share or part of this Basic Ordering Agreement or to any benefit arising there from.

4.13 Certification Regarding Debarment, Suspension and Other Responsibility Matters

This Basic Ordering Agreement is a covered transaction for purposes of 49 CFR Part 29. As such, the Supplier is required to verify that none of the Supplier, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Supplier is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into

By signing and submitting this Basic Ordering Agreement, the Supplier certifies as follows:

The certification in this clause is a material representation of fact relied upon by King County. If it is later determined that the Supplier knowingly rendered an erroneous certification, in addition to remedies available to King County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Supplier agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any Basic Ordering Agreement that may arise from this Basic Ordering Agreement. The Supplier further agrees to include a provision requiring such compliance in its lower tier covered transactions.

4.14 False or Fraudulent Statements or Claims

The Supplier acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the County in connection with this project, the County reserves the right to pursue the procedures and impose on the recipient the penalties of 18 USC § 1001, 31 USC §§ 3729 and 3801 et seq., and/or 49 USC § 5307(n)(1), as may be appropriate. The terms of Department of Transportation regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, are applicable to this project.

The Supplier agrees to include this clause in all subcontracts awarded under this Basic Ordering Agreement.

4.15 Energy Conservation

The Supplier agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the State Energy Conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 USC §§ 6321 *et seq.*, and 49 CFR Part 18.

The Supplier agrees to include this clause in all subcontracts awarded under this Basic Ordering Agreement.

4.16 Air Pollution

The Supplier and suppliers may be required to submit evidence to the Project Manager that the governing air pollution criteria shall be met. This evidence and related documents shall be retained by the manager for on-site examination by FTA.

4.17 Environmental Requirements

The Supplier agrees to comply with all applicable standards, orders or requirements as follows:

A. Environmental Protection

The Supplier agrees to comply with the applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 USC §§ 4321, *et seq.*, consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 USC § 4321 note. FTA statutory requirements on environmental matters at 49 USC § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 42 USC § 4321 *et seq.* and 40 CFR Part 1500, *et seq.*; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 CFR Part 771 and 49 CFR Part 622.

B. Mitigation of Adverse Environmental Effects

The Supplier agrees that if the Project should cause adverse environmental effects, the Supplier shall take all reasonable steps to minimize those effects in accordance with 49 USC § 5324(b), and all other applicable federal laws and regulations, specifically, the procedures of 23 CFR Part 771 and 49 CFR Part 622.

4.18 Preference for Recycled Products

To the extent practicable and economically feasible, the Supplier agrees to Provide a competitive preference for products and services that conserve natural resources and protect the environment and are energy efficient. Examples of such products may include, but are not limited to, products described in the United States EPA Guidelines at 40 CFR Part 247, implementing section 6002 of the Resource Conservation and Recovery Act, as amended, 42 USC § 6962, and Executive Order 12873.

4.19 Termination Provisions Required

All Basic Ordering Agreements and subcontracts in excess of \$10,000 shall contain contractual provisions or conditions that allow for termination for cause and convenience by the County including the manner by which it shall be effected and the basis for settlement.

Ref: FTA Circular 4220.1E § 15.b.